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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,631	04/02/2004	Robert Poth	MMIC1100-1	2851
38396	7590	01/26/2005		
JOHN BRUCKNER, P.C. 5708 BACK BAY LANE AUSTIN, TX 78739			EXAMINER MASINICK, MICHAEL D	
			ART UNIT 2125	PAPER NUMBER
DATE MAILED: 01/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/817,631</p>	<p>Applicant(s)</p> <p align="center">POTH, ROBERT</p>	
	<p>Examiner</p> <p align="center">Michael D Masinick</p>	<p>Art Unit</p> <p align="center">2125</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/2/2002</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected because the term "on board" is used in claim 1 to mean a memory device that is attached to the programmable thermostat. Claim 3 then sets forth that the "on board" memory can be a network storage device. This is contradictory and appropriate correction or explanation is required. Claim 3 also uses the term "can be" which renders the claim indefinite. Appropriate correction is required. Claim is further treated as best understood by the examiner.

3. Claim 30 recites the limitation "the interactive user interface". There is insufficient antecedent basis for this limitation in the claim and this claim is not further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,198,996 to Berstis.

6. Referring to claim 1, Berstis shows a method comprising: providing a usage monitoring heating ventilation and air conditioning control system, the usage monitoring heating ventilation control system including a programmable digital thermostat with an onboard memory (“onboard computer”/ RAM/ROM. Figure 4 – “comfort system”, Col 1, lines 55-57 ); issuing personal identification numbers to a plurality of system users (Column 15, lines 33-49); associating each of the plurality of system users with at least one of a plurality of user types (Col 4, lines 24-30); storing the personal identification numbers in a first data structure in the on board memory; linking each one of a plurality of entries in the first data structure by reference to at least one of a pluralities of entries in a second data structure in the on board memory, the second data structure including a list of user types. See Figures 14-18 of Berstis for a simple database structure which shows these database related elements. Examiner points also to claim 1 of Berstis for a very similar claim structure to the current claim.

7. Referring to claim 2, Berstis shows wherein each of the plurality of user types is associated with at least one of a plurality of function sets (Figure 18).

8. Referring to claim 3, Berstis shows wherein the on board memory is one of a variety of memory choices (Column 3, lines 5-Col 4, line 8).

9. Referring to claim 4, Berstis shows dynamically updating the first and second data structures (Column 4, line 64 – Col 5, line 5).

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10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 6,198,996 to Berstis.

12. Berstis does not specifically show that each user is associated with a user type selected from the group consisting of building owners, maintenance personnel, building tenants, and manufacturers.

13. Berstis does show the ability to have different user groups and different security levels for the different user groups as shown above (Column 4, lines 24-30 specifically). It would have been obvious to one of ordinary skill in the art at the time the invention was made to create user groups based upon the desired security levels of the personnel who would be using the system and where the system was to be used because those users would require a different security setting depending on the job and other reliability factors.

14. Referring to claim 29, Berstis shows where each user's PIN number (password) belongs to one user group (Column 4, lines 24-30 specifically).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and to the state of the art at the time of invention.

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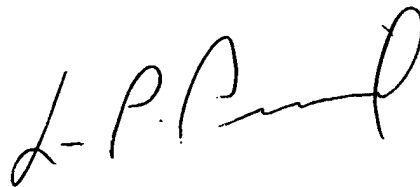
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MDM

A handwritten signature in black ink, appearing to read 'L. Picard', with a stylized flourish at the end.

LEO PICARD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100